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Malawi

The present report is a compilation of the information contained in reports of the treaty bodies and special procedures — including observations and comments by the State concerned —, in reports of the United Nations High Commissioner for Human Rights, and in other relevant official United Nations documents. It is presented in a summarized manner owing to word-limit constraints. For the full texts, please refer to the documents referenced. The report does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights other than those contained in public reports and statements issued by the Office. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. Information included herein has been systematically referenced in endnotes. The report has been prepared taking into consideration the periodicity of the review, and developments during that period.

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Please recycle

I. Background and framework

A. Scope of international obligations[1]

International human rights treaties[2]

	Status during previous cycle	*Action after review*	*Not ratified not accepted*
Ratification, accession or succession	ICERD (1996)	OP-CRC-AC (2010)	ICCPR-OP 2
	ICESCR (1993)		OP-CAT
	ICCPR (1993)		ICRMW
	CEDAW (1987)		ICPPED
	CAT (1996)		
	CRC (1991)		
	OP-CRC-SC (2009)		
	CRPD (2009)		
Reservations and or declarations		OP-CRC-AC (declaration: art. 3, para. 2: minimum age of recruitment: 18 years, 2010)	
Complaints procedures, inquiries and urgent action[3]	ICCPR-OP 1 (1996)		ICERD, art. 14
	CAT, art. 20 (1996)		OP-ICESCR
			ICCPR, art. 41
			OP-CEDAW (signature, 2000) CAT, arts. 21 and 22
			OP-CRC-IC
			ICRMW
			OP-CRPD
			ICPPED

Other main relevant international instruments

Status during previous cycle	*Action after review*	*Not ratified*
Conventions on refugees and stateless persons[4]		Convention on the Prevention and Punishment of the Crime of Genocide
Geneva Conventions of 12 August 1949 and Additional Protocols I and II[5]		ILO Conventions Nos. 169 and 189[8]
ILO fundamental conventions[6]		Additional Protocol III to the 1949 Geneva Conventions[9]
Rome Statute of the International Criminal Court		UNESCO Convention against Discrimination in Education
Palermo Protocol[7]		

1. In 2014, the Human Rights Committee (HR Committee) requested Malawi to consider acceding to ICCPR-OP 2.[10]

2. The Office of the United Nations High Commissioner for Refugees (UNHCR) stated that the reservations to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol were a major obstacle to refugees' ability to enjoy their rights, access services and attain self-reliance.[11] UNHCR recommended that Malawi withdraw the reservations[12] and accede to the 1961 Convention on the Reduction of Statelessness.[13]

3. The United Nations Educational, Scientific and Cultural Organization (UNESCO) stated that Malawi was not a party to the 1960 UNESCO Convention against Discrimination in Education.[14]

B. Constitutional and legislative framework

4. The United Nations county team (UNCT) stated that during the universal periodic review on 1 November 2010 (2010 review),[15] Malawi had expressed support for recommendation 102.5 to amend or repeal, as a matter of urgency, the Witchcraft Act,[16] but that the Witchcraft Act was still under review by the Law Commission.[17] Malawi had also expressed support for recommendation 102.4, to ensure that, inter alia, the Marriage, Divorce and Family Relations Bill entered into force as soon as possible.[18] However, that Bill had yet to be enacted into law.[19]

5. UNCT called for the enactment of the Marriage and Divorce Family Relations Bill, with provisions for the full and free consent of both partners to a marriage, and for the minimum age of marriage to be 18 years.[20] HR Committee urged Malawi to expedite the enactment of the bill and to ensure that it set the minimum age of marriage in accordance with international standards.[21]

6. The Special Rapporteur on the right to food recommended that Malawi establish a framework law on the right to food, building on the draft food security bill, through a consultative process with relevant stakeholders.[22]

7. UNHCR recommended the enactment of the draft refugee law, pending since 2011.[23]

8. UNESCO stated that defamation was a criminal offence.[24] It recommended that defamation be decriminalized and incorporated into the Civil Code.[25]

9. HR Committee expressed concern about delays in the adoption of the Access to Information Bill and about the potential of the draft E-Bill to limit freedom of expression . It stated that Malawi should expedite the adoption of the bill and ensure that its provisions and those of the E-Bill were in conformity with ICCPR.[26]

10. HR Committee was concerned that the provisions of ICCPR were not given full effect in Malawi's legislation, and urged Malawi to give them full effect in its legislation.[27]

C. Institutional and human rights infrastructure and policy measures

Status of national human rights institutions[28]

National human rights institution	*Status during previous cycle*	*Status during present cycle*[29]
Human Rights Commission	A (2007)	A (re-accreditation deferred to March 2015)[30]

11. HR Committee was concerned that the Malawi Human Rights Commission did not function independently and was not adequately funded. It was also concerned at the

Commission's reluctance to engage on lesbian, gay, bisexual, transgender and intersex (LGBTI) issues. It stated that Malawi should amend the Human Rights Commission Act to ensure that the Commission enjoyed full independence; provide the Commission with adequate resources; and establish mechanisms for the implementation of the Commission's recommendations. Furthermore, the Commission should fully comply with its mandate and engage on all human rights issues, including those related to the rights of LGBTI persons.[11]

12. In 2014, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) Sub-Committee on Accreditation noted the proposed amendments to the Human Rights Commission Act and that the Government intended to have the proposed amendments considered in Parliament during its February 2015 session. The draft bill would address all of the Sub-Committee's previous recommendations.[12]

13. The Special Rapporteur on the right to food recommended that Malawi improve mechanisms and methodologies for the collection of adequately disaggregated data on poverty and food insecurity, with a view to improving the accuracy and reliability of different national surveys.[13]

14. UNCT stated that recommendation 102.11, which had been made during the 2010 review, relating to the adoption of a national action plan, legislation and policies for the protection of children's rights, was not fully implemented.[14] A national plan of action for vulnerable children (2014–2018), was in the process of being finalized, but the policy and national plan of action for children, mentioned in the recommendation, had yet to be finalized and implemented.[15]

II. Cooperation with human rights mechanisms

A. Cooperation with treaty bodies[16]

1. Reporting status

Treaty body	*Concluding observations included in previous review*	*Latest report submitted since previous review*	*Latest concluding observations*	*Reporting status*
CERD	August 2003	--	--	Initial report overdue since 1997
CESCR	--	--	--	Initial report overdue since 1996
HR Committee	--	2012	November 2011 (provisional, in the absence of a report); July 2014	Second report due in 2018
CEDAW	February 2010	2014	--	Seventh report pending consideration in 2015
CAT	--	--	--	Initial report overdue since 1997
CRC	January 2009	--	--	Third to fifth reports overdue since 2013; initial OP-CRC-SC report overdue since 2011; initial OP-CRC-AC report overdue since 2012
CRPD	--	--	--	Initial report overdue since 2011

2. Responses to specific follow-up requests by treaty bodies

Concluding observations

Treaty body	*Due in*	*Subject matter*	*Submitted in*
HR Committee	2015	Extrajudicial killings; torture; sexual abuse of children; and forced and child marriages[37]	2013;[39] additional information requested[40]
CEDAW	2012	Enactment of outstanding bills on gender equality; maternal mortality and abortion[38]	

B. Cooperation with special procedures[41]

	Status during previous cycle	*Current status*
Standing invitation	No	No
Visits undertaken	--	Food (2013)
Visits agreed to in principle	--	Freedom of peaceful assembly and association
Visits requested	Food	Extreme poverty
	Adequate housing	Human rights defenders
Responses to letters of allegation and urgent appeals	During the period under review, nine communications were sent. The Government replied to four communications.	

III. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Equality and non-discrimination

15. UNCT stated that gender disparities existed in areas such as education, agriculture, trade, political participation, health and employment. This resulted in gender inequalities in the division of power, participation and control over resources and decision-making processes, and thus women remained disadvantaged in the socioeconomic, legal and political arenas.[42]

16. The Special Rapporteur on the right to food indicated that women were among the ultra-poor and faced specific impediments to their enjoyment of the right to food. Given their traditional role in the family, women, in most cases, shouldered an unequal share of household responsibilities. Moreover, women constituted 70 per cent of the agricultural workforce, yet they were unequal to men in decision-making and control over production resources and land.[43] The Special Rapporteur recommended that Malawi strengthen the integration of a gender perspective into food and nutrition security strategies and programmes.[44]

17. While welcoming the adoption of the Gender Equality Act, HR Committee regretted that there were still laws in force which discriminated against women. It was particularly

concerned that, by law, women were denied rights equal to those with men with respect to nationality. It stated that Malawi should, inter alia, allocate adequate financial and human resources to the implementation of the Gender Equality Act and amend all laws that still discriminated against women, in particular sections 9 and 16 of the Citizenship Act, so as to ensure that nationality provisions applied equally to men and women.[45]

18. UNCT stated that the Gender Equality Act (2013), which came into force in April 2014, prohibited harmful traditional practices, gender-based violence, sex discrimination and sexual harassment. It provided for the participation of women in decision-making positions in all spheres of life, especially public and political life, and equality of access to education and training, and recognized sexual and reproductive health rights. The Act proposed the introduction of quotas in education, employment and politics to ensure the visibility and substantive participation of women in those spheres. Efforts were in progress to develop implementation guidelines for the Act.[46]

19. HR Committee was concerned that the draft bill on HIV/AIDS contained provisions which were not in conformity with ICCPR, such as those allowing a health service provider to disclose a person's HIV status and providing for compulsory testing in certain circumstances. It stated that Malawi should review the draft bill on HIV/AIDS to ensure full compliance with ICCPR and international standards, and expedite its adoption.[47]

20. UNCT stated that women's experience of HIV and AIDS accentuated gender disparities and affected women's roles at home and work and in society. The psychosocial and socioeconomic dimensions of HIV and AIDS were different for women and men because of women's unequal status in the community. Gender inequality was a key variable in the high incidence of HIV and AIDS transmission among women. Vulnerability to HIV and AIDS was increased by a lack of respect for women's sexual and reproductive health rights. Women's subordinate position in society restricted the possibilities for women to take control of their lives to combat HIV and AIDS, leave a high-risk relationship or have adequate access to quality health care.[48]

B. Right to life, liberty and security of the person

21. While welcoming the de facto moratorium on executions, HR Committee urged Malawi to consider abolishing the death penalty and to review the Penal Code to ensure that, if imposed, the death penalty was applicable only to the most serious crimes. It also stated that Malawi should provide adequate funds to resentence prisoners who had received the mandatory death penalty, and ensure the right to seek pardon or commutation of the death sentence.[49]

22. HR Committee was concerned at the high number of reported cases of torture by law enforcement officers, and that the law on the use of firearms by police officers did not comply with international standards. It urged Malawi to investigate all cases of torture, prosecute alleged perpetrators and compensate victims, and to ensure that the Police Act complied with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officers.[50]

23. The Working Group on Arbitrary Detention noted that four detainees had been kept in detention without trial for long periods and without minimum due process guarantees, including being promptly informed of the charges against them, and their rights to access legal counsel, to be presented before a judge and to be tried within a reasonable time.[51] It concluded that their detention was arbitrary, in contravention of articles 9 and 14 of ICCPR.[52]

24. UNCT noted that during the 2010 review, Malawi had accepted a recommendation to, inter alia, promptly establish a Police Complaints Commission.[53] UNCT stated that an

Independent Police Complaints Commission had been established, but was yet to be operational.[54] Also, the Malawi Police Service had an Internal Affairs Unit with the mandate to investigate complaints against police officers, including violations of human rights, but the Unit was understaffed.[55]

25. HR Committee was concerned about the conditions of detention in prisons. It stated that Malawi should, inter alia, expedite the adoption of the Prison Act; strengthen the capacity and independence of the Prison Inspectorate; establish mechanisms to consistently consider the Inspectorate's recommendations; and facilitate complaints from detainees.[56]

26. The Special Rapporteur on the right to food visited Maula Prison in the light of a 2009 High Court ruling concerning problems of severe overcrowding and inadequate food in prisons.[57] He mentioned that the Prison Service was only able to provide prisoners with one daily meal and that there were days when prisoners received no food.[58] He recommended that Malawi take immediate measures to ensure adequate food in prisons, including by raising current minimum standards in the new Prison Act.[59]

27. HR Committee was concerned that domestic violence remained widespread. It urged Malawi to expedite the review of the Prevention of Domestic Violence Act, explicitly criminalize spousal rape, bring alleged perpetrators to justice and strengthen the mechanisms to protect, compensate, rehabilitate and reintegrate victims.[60]

28. UNCT stated that violence against women and girls was widespread. Gender-based violence was rooted in socioeconomic and cultural factors at the household and community levels, including social-cultural and economic inequalities between men and women and the lack of empowerment of women. Sexual abuse of girls by teachers in schools, wife inheritance and sexual cleansing of widows were some of the aspects of gender-related violence. UNCT underscored the need for more gender-sensitive legislation and stronger enforcement of existing laws, greater support to victims and increased public awareness and promotion of gender equality.[61]

29. HR Committee was concerned about the persistence of traditional practices targeting widows, and urged explicit criminalization of "widow inheritance" and any other harmful traditional practices that discriminated against women and girls.[62]

30. HR Committee was concerned about reports on the prevalence of the practice of female genital mutilation, and urged Malawi to explicitly criminalize that practice.[63]

31. HR Committee was concerned about the persistent practice of forced and child marriages. It urged Malawi to expedite the adoption of the Marriage, Divorce and Family Relations Bill and to ensure that forced and child marriages were explicitly criminalized.[64]

32. HR Committee was concerned about the practice of ceremonies for girls which, inter alia, led to sexual abuse. It stated that Malawi should explicitly criminalize the practice of "sexual cleansing" rituals and ceremonies which led to sexual abuse, and to adopt a strategy to address such practices.[65]

33. HR Committee was concerned about the high prevalence of sexual abuse of children and that the Penal Code did not criminalize all forms of sexual abuse of boys. It urged Malawi to amend the Penal Code to criminalize all forms of sexual abuse of children, regardless of the sex of the child, bring perpetrators to justice and rehabilitate and compensate the victims.[66]

34. HR Committee was concerned about the high prevalence of child labour. It stated that Malawi should eliminate child labour by allocating adequate resources to the effective implementation of laws and relevant treaties.[67] Malawi should also develop a policy to reduce and prevent the phenomena of children in street situations.[68]

35. UNCT noted that, during the 2010 review, Malawi had accepted recommendations 102.12, 102.31, 102.32 and 102.33, all of which related, inter alia, to human trafficking. It stated that although the Child Care, Protection and Justice Act criminalized child trafficking, the existing legal framework that covered trafficking in persons was weak. It stated that the Law Commission had proposed the enactment of new legislation in that regard and the bill should have been submitted to Parliament in September 2014.[69]

36. HR Committee expressed concern about the prevalence of trafficking in persons, the lack of available official data and the delays in adopting specific legislation on trafficking. It deeply regretted the lack of adequate programmes for victims of trafficking. It stated that Malawi should expedite the adoption of a law on trafficking in persons, which provided for the criminalization of all forms of trafficking, sanctions and adequate assistance for victims, and that it bring alleged perpetrators to justice and ensure protection, assistance, rehabilitation and compensation for all victims.[70]

C. Administration of justice, including impunity and the rule of law

37. HR Committee was concerned about the high number of persons in pretrial detention; that pretrial detainees were not always held separately from convicted prisoners; and that the alternative measures to detention were not adequately applied in practice. It stated that Malawi should reduce the number of persons in pretrial detention; ensure that convicted persons were not detained with pretrial detainees; and increase the use of non-custodial penalties.[71]

38. HR Committee was concerned about the lack of sufficient judges, judicial officers and lawyers to address the backlog of court cases, and that the Legal Aid Office was under-resourced and understaffed. It stated that Malawi should develop a national policy for reducing the backlog of cases; strengthen the appeals procedure; increase the number of judges and judicial officers, in particular in rural areas; and implement the Legal Aid Act and the Legal Education and Legal Practitioners Act.[72]

39. HR Committee was concerned about reports of extrajudicial killings for which the alleged perpetrators had not yet been prosecuted or the prosecutions had not progressed expeditiously. It stated that Malawi should prosecute all alleged perpetrators of extrajudicial killings; expeditiously complete all prosecutions that had been initiated; and protect, rehabilitate and compensate the victims.[73]

40. UNCT stated that in sexual violence cases, women were unwilling to testify to their attacks because of the stigma associated with such attacks. It called for the formulation of special rules for court proceedings in cases of sexual violence. UNCT also stated that a key challenge to successfully prosecuting sexual violence offences was the requirement that the testimony of the victim be corroborated. In most cases, there was no corroborating evidence and Malawi did not have DNA testing facilities.[74]

41. UNCT stated that Malawi had made progress in strengthening the juvenile justice system: six child-friendly courts were operational in Blantyre, Zomba, Mzuzu, Nkhata-bay, Salima and Mulanje; and 37 magistrates, 39 police prosecutors, 37 probation officers and 34 court clerks had been trained in juvenile justice. It considered that recommendation 102.37 made during the 2010 review, relating to juvenile justice, had been implemented.[75]

42. HR Committee was concerned that the age of criminal responsibility for children, which was set at 10 years in 2010, was still too low. It stated that Malawi should raise the age of criminal responsibility for children in accordance with international standards.[76]

D. Right to privacy, marriage and family life

43. HR Committee was concerned about searches without warrants and stated that Malawi should consider repealing section 35 of the Police Act in order to prevent arbitrary searches and interference with liberty and privacy.[77]

44. HR Committee stated that Malawi should explicitly provide by law that, in cases of divorce, courts fully recognize the value of non-financial contributions with regard to the acquisition of property during marriage.[78]

45. HR Committee was concerned that consensual same-sex sexual activity among consenting adults was still criminalized and about reports of violence against LGBTI persons. It stated that Malawi should review its legislation so as to explicitly include sexual orientation and gender identity among the prohibited grounds of discrimination, and to repeal the provisions that criminalized homosexuality and other consensual sexual activities among adults (arts. 137 (A), 153, 154 and 156 of the Penal Code). It also stated that Malawi should prosecute the perpetrators of violence against LGBTI persons; compensate the victims; and ensure that public officials refrained from using language that might encourage such violence.[79]

E. Freedom of expression, association and peaceful assembly, and right to participate in public and political life

46. HR Committee noted with satisfaction that Malawi had repealed section 46 of the Penal Code that empowered the Minister of Information to ban newspapers. However, it remained concerned about reports of journalists and human rights defenders being harassed and/or arrested by police. It stated that Malawi should ensure protection for journalists and human rights defenders from harassment and arbitrary arrest, prosecute those responsible and compensate the victims.[80]

47. In 2012, the Special Rapporteur on the situation of human rights defenders expressed deep concern about the situation of human rights defenders in Malawi, particularly with regard to restrictions on their rights to freedom of assembly and freedom of expression. She noted that human rights defenders who had exercised those rights had been subjected to violent attacks by security forces and other actors, which had resulted in injuries and even death.[81]

48. HR Committee noted that the Commission of Inquiry set up to investigate the handling of demonstrations in July 2011 had presented its findings in July 2012. It stated that Malawi should expeditiously prosecute all persons allegedly responsible for arrests, killings and ill-treatment in relation to the demonstrations and adequately compensate the victims.[82]

49. HR Committee stated that Malawi should guarantee the freedom of assembly and association, including by removing obstacles to the right to demonstrate and by applying the 48-hour notification rule.[83]

F. Right to work and to just and favourable conditions of work

50. The Special Rapporteur on the right to food stated that Malawi had one of the lowest national minimum wages worldwide, as a consequence of several decades of policies designed to produce cheap labour for the emerging estate sector by depressing the price of labour.[84] He recommended that the Government: reform the national minimum wage to ensure for all workers, including casual/seasonal workers, a living wage, in line with

international human rights law; ensure that collective bargaining and the right to organize were respected in all sectors; and strengthen oversight of compliance with labour legislation, including through an adequately staffed and empowered labour inspectorate.[85]

51. HR Committee was concerned about reports that Rastafarians did not enjoy equal access to employment. It stated that Malawi should ensure equal access to employment for Rastafarians.[86]

G. Right to social security and to an adequate standard of living

52. The Special Rapporteur on the right to food indicated that Malawi was among the poorest countries in the world, ranking 170th of 186 surveyed countries in the 2013 Human Development Index. He noted that the more than half of the population who live below the poverty line had seen little or no improvement in their situation over the past decade. One quarter of Malawians were considered "ultra poor", with an income below the estimated cost of food that would provide the minimum daily recommended calorie intake. Inequality had worsened;[87] and one third of the population was food insecure, with disrupted eating patterns and reduced food intake.[88] The Special Rapporteur also noted that Malawi had one of the highest population growth rates in the region; its population was expected to triple to over 40 million by 2040.[89] The Special Rapporteur advised that the country's main agriculture support programme, the Farm Input Subsidy Programme (FISP), was in need of reform.[90]

53. The Special Rapporteur on the right to food recommended that the Government, inter alia: review and reform current agricultural input support programmes, in particular the FISP, which was aimed at supporting smallholder farmers and addressing food insecurity;[91] ensure that the legal framework for the governance of land provided adequate protection against land grabbing and forced displacement, and gave specific attention to the specific obstacles faced by women;[92] scale up school feeding programmes to achieve full national coverage, and source food for such programmes locally to create synergies with efforts to promote smallholder food production;[93] scale up the social protection scheme of cash transfers to move away from donor-funded and time-bound projects towards a comprehensive system providing for a standing national social protection floor, while strengthening current mechanisms of community-based targeting.[94]

54. The Special Rapporteur on the right to food also observed that HIV/AIDS had resulted in a high number of "orphaned elderly", who lacked the support of other family members, and of orphaned children being cared for by their grandparents or living in child-headed households.[95]

55. UNCT stated that in 2012/13, almost 2 million people were classified as food insecure and in 2013/14, about 1.85 million were classified as food insecure, despite a national surplus of maize production.[96]

H. Right to health

56. HR Committee was deeply concerned about the high rates of maternal mortality, the general criminalization of abortion and the high percentage of unsafe abortion-related maternal deaths. While noting that a special commission had been set up in 2013 to review the abortion law, it was concerned about the excessive delays in reforming the law. It stated that Malawi should urgently review its legislation on abortion and provide for additional exceptions, such as in cases of pregnancy resulting from rape or incest, and when the pregnancy posed a risk to the health of the woman The law should make reproductive

health services accessible for all women and adolescents, including in rural areas, and reduce maternal mortality.[97]

57. UNCT stated that the major causes of maternal deaths included haemorrhage, hypertension, sepsis and unsafe abortions. It mentioned the limited access to emergency obstetric care services; the unmet need for family planning; and the limited access to quality sexual and reproductive health information and services for women and girls, especially in rural and hard-to-reach areas. As a result of the high rate of teenage pregnancy, there was a large number of cases of obstetric fistula.[98]

58. HR Committee stated that Malawi should reduce teenage pregnancies by providing adequate sexual and reproductive health services.[99]

59. The Special Rapporteur on the right to food noted that levels of malnutrition were alarmingly high: about half of all children under 5 years of age showed signs of chronic malnutrition; an estimated 48 per cent were too short for their age (stunted); 30.6 per cent weighed too little for their age (underweight); and 11.4 per cent weighed too little for their height (wasted).[100]

60. HR Committee was concerned that LGBTI persons did not enjoy effective access to health services. It stated that Malawi should guarantee effective access to health services, including HIV/AIDS treatment, for LGBTI persons.[101]

61. UNCT stated that the criminalization of consensual same sex relations, societal stigma and discrimination had a detrimental impact on the enjoyment of the right to health. LGBTI persons were often not included in public health and support initiatives, such as education programmes or the provision of disease and infection prevention and care, and were denied access to necessary information, support and services to make informed decisions and to reduce their vulnerability to HIV.[102]

62. UNAIDS reported that since 2010, the number of new HIV infections in Malawi had decreased by 41 per cent.[103] UNCT also reported a decline in the HIV epidemic and that Malawi was on track to achieve both goal 6 (Combat HIV/AIDS, malaria and other diseases) and goal 4 (Reduce child mortality) of the Millennium Development Goals.[104]

I. Right to education

63. UNESCO stated that Malawi did not offer compulsory and free education for all.[105] It recommended that Malawi be encouraged to make primary education free and compulsory.[106]

64. HR Committee was concerned about reports that Rastafarian children were sometimes denied access to schools. Malawi should ensure equal access to education for Rastafarians.[107]

65. UNCT stated that despite the abolition of school fees in 1994, over 10 per cent of eligible children did not attend school. Net enrolment rates were high in grades 1 and 2 for both boys and girls, but completion rates for primary education were low at 26 per cent on average and only 16 per cent for girls; class sizes were huge, with a teacher-pupil ratio of 1:107 pupils. UNCT stated that the serious shortage of classrooms forced many children to learn outside in the open; only 20 per cent of children attending school had access to furniture; and teaching and learning materials were in short supply.[108]

66. UNESCO stated that Malawi had not taken sufficient measures to promote human rights education.[109] It recommended that Malawi be encouraged to further promote human rights education.[110]

67. UNCT stated that gender parity in enrolment in secondary education had not been achieved and was unlikely to be achieved by the Millennium Development Goal target date of 2015.[111]

J. Cultural rights

68. UNESCO stated that, as a party to the Convention concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention for the Safeguarding of the Intangible Cultural Heritage (2003) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), Malawi should be encouraged to fully implement the provisions that promoted access to and participation in cultural heritage and creative expressions, which were conducive to implementing the right to participate in cultural life.[112]

K. Persons with disabilities

69. HR Committee was concerned about delays in implementing the Disability Act and the absence of programmes addressing the needs of persons with albinism. It stated that Malawi should allocate sufficient resources to the implementation of the Disability Act; ensure effective remedies in cases of violation of its provisions; and implement programmes specifically addressing the needs of persons with albinism.[113]

L. Migrants, refugees and asylum seekers

70. HR Committee was concerned that Malawi had not granted refugee status to any asylum seeker since 2011. It was also concerned about reports that persons in need of international protection had been denied entry. It stated that Malawi should fully comply with the principle of non-refoulement and ensure that all persons in need of international protection received appropriate and fair treatment, and that decisions on refugee status determination were dealt with expeditiously.[114]

71. UNHCR stated that the Eligibility Committee had not considered applications for refugee status for about two and a half years. It recommended that Malawi resuscitate the refugee eligibility determination process and hold refugee eligibility determination sessions on a regular basis, at least once a month.[115]

72. UNHCR welcomed the compulsory universal birth registration process launched in 2012, and recommended that Malawi consider issuing birth certificates to children of refugees and asylum seekers born on its territory.[116]

M. Right to development, and environmental issues

73. In 2014, the Special Rapporteur on the right to food noted that the 1994 Constitution of Malawi referred to access to food as part of the human right to development, and committed the State to "take all necessary measures for the realization of the right to development". Consistent with the status of the right to food in domestic law and with the international obligations of the country, Malawian courts had recognized the justiciability of economic, social and cultural rights, including the right to adequate food.[117]

74. The Special Rapporteur on the right to food indicated that, partly as the result of strong demographic growth, Malawi's natural resources were under enormous pressure. While land degradation (aggravated depletion of soil fertility) was the most worrying sign

of the ecological crisis in Malawi, the country was also prone to natural disasters, in particular floods, droughts and dry spells. Droughts and floods pushed, on average, approximately 265,000 more people into poverty each year and caused an annual average loss of 1.7 per cent of gross domestic product.[118]

Notes

[1] Unless indicated otherwise, the status of ratification of instruments listed in the table may be found on the official website of the United Nations Treaty Collection database, Office of Legal Affairs of the United Nations Secretariat, http://treaties.un.org/. Please also refer to the United Nations compilation on Malawi from the previous cycle (A/HRC/WG.6/9/MWI/2).

[2] The following abbreviations are used in UPR documents:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination;
ICESCR	International Covenant on Economic, Social and Cultural Rights;
OP-ICESCR	Optional Protocol to ICESCR;
ICCPR	International Covenant on Civil and Political Rights;
ICCPR-OP 1	Optional Protocol to ICCPR;
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty;
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women;
OP-CEDAW	Optional Protocol to CEDAW;
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
OP-CAT	Optional Protocol to CAT;
CRC	Convention on the Rights of the Child;
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict;
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography;
OP-CRC-IC	Optional Protocol to CRC on a communications procedure;
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
CRPD	Convention on the Rights of Persons with Disabilities;
OP-CRPD	Optional Protocol to CRPD;
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance.

[3] Individual complaints: ICCPR-OP 1, art. 1; OP-CEDAW, art. 1; OP-CRPD, art. 1; OP-ICESCR, art. 1; OP-CRC-IC, art. 5; ICERD, art. 14; CAT, art. 22; ICRMW, art. 77; and ICPPED, art. 31. Inquiry procedure: OP-CEDAW, art. 8; CAT, art. 20; ICPPED, art. 33; OP-CRPD, art. 6; OP-ICESCR, art. 11; and OP-CRC-IC, art. 13. Inter-State complaints: ICCPR, art. 41; ICRMW, art. 76; ICPPED, art. 32; CAT, art. 21; OP-ICESCR, art. 10; and OP-CRC-IC, art. 12. Urgent action: ICPPED, art. 30.

[4] 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and 1954 Convention relating to the Status of Stateless Persons.

[5] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Geneva Convention relative to the Treatment of Prisoners of War (Third Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). For the official status of ratifications, see International Committee of the Red Cross, www.icrc.org/IHL.

[6] International Labour Organization Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182).

[7] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

[8] International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169); and Domestic Workers Convention, 2011 (No. 189).

[9] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see International Committee of the Red Cross, www.icrc.org/IHL.

[10] CCPR/C/MWI/CO/1/Add.1, para. 11.

[11] UNHCR submission for the UPR of Malawi, p. 2.

[12] Ibid., p. 2.

[13] Ibid., p. 4.

[14] UNESCO submission for the UPR of Malawi, para. 17.

[15] See A/HRC/16/4.

[16] UNCT submission for the UPR of Malawi, para. 4; see also A/HRC/16/4, para. 102.5.

[17] UNCT submission, para. 4.

[18] Ibid., para. 4; see also A/HRC/16/4, para 102.4.

[19] UNCT submission, para. 4.

[20] Ibid., para. 20.

[21] CCPR/C/MWI/CO/1/Add.1, para. 25. See also letter dated 15 November 2013 from the Rapporteur for follow-up on concluding observations of CEDAW to the Permanent Representative of the Republic of Malawi to the United Nations, available from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MWI/INT_CEDAW_FUL_MWI_15778_E.pdf.

[22] A/HRC/25/57/Add.1, para. 83 (a).

[23] UNHCR submission, p. 2.

[24] UNESCO submission, para. 25.

[25] Ibid., para. 35.

[26] CCPR/C/MWI/CO/1/Add.1, para. 22.

[27] Ibid., para. 5.

[28] According to article 5 of the rules of procedure of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) Sub-Committee on Accreditation, the classifications for accreditation used by the Sub-Committee are: A: Voting Member (fully in compliance with each of the Paris Principles); B: Non-Voting Member (not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination); C: No Status (not in compliance with the Paris Principles).

[29] For the list of national human rights institutions with accreditation status granted by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), see A/HRC/27/40, annex.

[30] Pending its re-accreditation, the NHRI retains its A status.

[31] CCPR/C/MWI/CO/1/Add.1, para. 6.

[32] ICC Sub-Committee on Accreditation Report – October 2014, pp. 20-21.

[33] A/HRC/25/57/Add.1, para. 83 (c).

[34] UNCT submission, para. 8; see also A/HRC/16/4, para. 102.11.

[35] UNCT submission, para. 8.

[36] The following abbreviations are used in UPR documents:

CERD	Committee on the Elimination of Racial Discrimination;
CESCR	Committee on Economic, Social and Cultural Rights;
HR Committee	Human Rights Committee;
CEDAW	Committee on the Elimination of Discrimination against Women;
CAT	Committee against Torture;
CRC	Committee on the Rights of the Child;

CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families;
CRPD	Committee on the Rights of Persons with Disabilities;
CED	Committee on Enforced Disappearances;
SPT	Subcommittee on Prevention of Torture.

[37] CCPR/C/MWI/CO/1/Add.1, para. 29.
[38] CEDAW/C/MWI/CO/6, para. 52.
[39] CEDAW/C/MWI/CO/6/Add.1.
[40] See letter dated 15 November 2013 from the Rapporteur for follow-up on concluding observations of CEDAW to the Permanent Representative of the Republic of Malawi to the United Nations, available from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MWI/INT_CEDAW_FUL_MWI_15778_E.pdf.
[41] For the titles of special procedures, see www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx and www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx.
[42] UNCT submission, para. 12.
[43] A/HRC/25/57/Add.1, para. 68.
[44] Ibid., para. 83 (b).
[45] CCPR/C/MWI/CO/1/Add.1, para. 7; also UNCT submission, para. 21.
[46] UNCT submission, para. 18.
[47] CCPR/C/MWI/CO/1/Add.1, para. 20.
[48] UNCT submission, para. 13.
[49] CCPR/C/MWI/CO/1/Add.1, para. 11.
[50] Ibid., para. 13.
[51] A/HRC/WGAD/2012/15, para. 52.
[52] Ibid., para. 56.
[53] UNCT submission, para. 30.
[54] Ibid., para. 30.
[55] Ibid., para. 30.
[56] CCPR/C/MWI/CO/1/Add.1, para. 16.
[57] A/HRC/25/57/Add.1, para. 70, referring to High Court of Malawi Lilongwe District Registry, Constitutional case No. 15 of 2007, *Masangano* v. *Attorney General, Minister of Home Affairs and Internal Security, and Commissioner of Prisons*, ruling of 19 February 2009.
[58] A/HRC/25/57/Add.1, para. 71.
[59] Ibid., para. 83 (n).
[60] CCPR/C/MWI/CO/1/Add.1, para. 14.
[61] UNCT submission, para. 31.
[62] CCPR/C/MWI/CO/1/Add.1, para. 8.
[63] Ibid., para. 8.
[64] Ibid., para. 25.
[65] Ibid., para. 8.
[66] Ibid., para. 24.
[67] Ibid., para. 26.
[68] Ibid., para. 26.
[69] UNCT submission, para. 36.
[70] CCPR/C/MWI/CO/1/Add.1, para. 17.
[71] Ibid., para. 15.
[72] Ibid., para. 18; see also UNCT submission, para. 37.
[73] CCPR/C/MWI/CO/1/Add.1, para. 12; also UNCT submission, para. 26.
[74] UNCT submission, para. 35.
[75] Ibid., para. 38.
[76] CCPR/C/MWI/CO/1/Add.1, para. 18.
[77] Ibid., para. 20.
[78] Ibid., para. 7.
[79] Ibid., para. 10; also UNCT submission, para. 14.
[80] CCPR/C/MWI/CO/1/Add.1, para. 22.
[81] A/HRC/19/55/Add.2, para. 225.

[82] CCPR/C/MWI/CO/1/Add.1, para. 23.
[83] CCPR/C/MWI/CO/1, para. 17.
[84] A/HRC/25/57/Add.1, para. 44.
[85] Ibid., para. 83 (e) –(g).
[86] CCPR/C/MWI/CO/1/Add.1, para. 21.
[87] A/HRC/25/57/Add.1, para. 9.
[88] Ibid., para. 11.
[89] Ibid., para. 5.
[90] Ibid., p. 1.
[91] Ibid., para. 83(d).
[92] Ibid., para. 83(i).
[93] Ibid., para. 83(k).
[94] Ibid., para. 83 (m).
[95] Ibid., para. 63.
[96] UNCT submission, para. 44.
[97] CCPR/C/MWI/CO/1/Add.1, para. 9; see also letter dated 15 November 2013 from the Rapporteur for follow-up on concluding observations of CEDAW to the Permanent Representative of the Republic of Malawi to the United Nations, available from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MWI/INT_CEDAW_FUL_MWI_15778_E.pdf.
[98] UNCT submission, para. 23.
[99] CCPR/C/MWI/CO/1/Add.1, para. 9.
[100] A/HRC/25/57/Add.1, para. 10.
[101] CCPR/C/MWI/CO/1/Add.1, para. 10.
[102] UNCT submission, para. 16.
[103] UNAIDS, The Gap Report 2014, p. 30.
[104] UNCT submission, para. 25.
[105] UNESCO submission, para. 32.
[106] Ibid., para. 33.4.
[107] CCPR/C/MWI/CO/1/Add.1, para. 21.
[108] UNCT submission, para. 45.
[109] UNESCO submission, para. 32.
[110] Ibid., para. 33.3.
[111] UNCT submission, para. 46.
[112] UNESCO submission, para. 37.
[113] CCPR/C/MWI/CO/1/Add.1, para. 19.
[114] Ibid., para. 27.
[115] UNHCR submission, p. 3.
[116] Ibid., p. 3.
[117] A/HRC/25/57/Add.1, paras. 14 and 15.
[118] Ibid., paras. 6 and 7.